

RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) **When Depositions May Be Taken.** [NO CHANGE]

(b) **Notice; Method of Taking; Production at Deposition.**

(1)–(3) [NO CHANGE]

(4) Any deposition may be audiovisually recorded ~~by videotape~~ without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to ~~videotape~~ audiovisually record a deposition must state in the notice that the deposition is to be ~~videotaped~~ audiovisually recorded and must give the name and address of the operator. Any subpoena served on the person to be examined must state the method or methods for recording the testimony.

(B) ~~Stenographer~~ Court Reporter. ~~Videotaped~~ Audiovisually recorded depositions must also be ~~recorded stenographically~~ transcribed, unless all parties agree otherwise.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) swear the witness.

(D) Custody of ~~Tape~~ Recordings and Copies. The attorney for the party requesting the ~~videotaping~~ audiovisual recording of the deposition must take custody of and be responsible for the safeguarding of the ~~videotape~~ audiovisual recording, must permit the viewing of it by the opposing party, and, if requested, must provide a copy of the ~~videotape~~ audiovisual recording at the expense of the party requesting the copy.

(E) Cost of ~~Videotaped~~ Audiovisually Recorded Depositions. The party requesting the ~~videotaping~~ audiovisual recording must bear the initial cost of ~~videotaping~~ recording.

(5)–(6) [NO CHANGE]

(7) If not otherwise agreed by the parties, On motion the court may order that the testimony at a deposition be taken by telephone or comparable audio equipment, or by video conference or comparable audiovisual equipment. The order may prescribe the manner in which the deposition will be taken. The cost for the use of such equipment is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court. A party may also arrange for a stenographic transcript at that party's own initial expense.

(8) [NO CHANGE]

(c) **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except ~~that~~ when a deposition is being taken by using communication telephone or comparable audio equipment. Deposition testimony may be taken by using communication equipment only after an oath has been administered consistent with Florida law, including Chapter 117, Florida Statutes. ~~the witness must be sworn by a person physically present with the witness who is qualified to administer an oath in that location. If deposition testimony is being taken via video conference or comparable audiovisual equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual communication equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who administers the oath consistent with the laws of the jurisdiction.~~ The testimony must be taken stenographically transcribed or recorded by any other means ordered in accordance with subdivision (b)(4). If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer on the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the

party taking the deposition and that party must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(d)—(h) [NO CHANGE]

Committee Notes

[NO CHANGE]

Court Commentary

[NO CHANGE]

RULE 1.451. TAKING TESTIMONY

(a) **Testimony at Hearing or Trial.** [NO CHANGE]

(b) **Communication Equipment.** The court may permit a witness to testify at a hearing or trial by contemporaneous audio, or by video conference or comparable audiovisual communication equipment;

_____ (1) by agreement of the parties; or

_____ (2) for good cause shown upon written request of a party upon reasonable notice to all other parties.

The request and notice must contain the substance of the proposed testimony and an estimate of the length of the proposed testimony. In considering sufficient good cause, the court shall weigh and address in its order the reasons stated for testimony by communication equipment against the potential for prejudice to the objecting party.

(c) **Required Equipment.** Communication equipment as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video conference or comparable audiovisual communication equipment must make the witness both audible and visible to all participants during the testimony. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the equipment and the transmission of the testimony so the court may stop the communication to accommodate objection or prevent prejudice

(d) **Oath.** Testimony may be taken through ~~audio~~-communication equipment only after an ~~if a notary public or other person authorized to administer oaths~~ **has been administered to the witness consistent with Florida law, including Chapter 117, Florida Statutes.** ~~in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided at the hearing via video conference or comparable audiovisual communication equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual communication equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who administers the oath consistent with the laws of the jurisdiction.~~

(e) **Burden of Expense.** The cost for the use of the communication equipment is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court.

RULE 2.530. COMMUNICATION EQUIPMENT

(a) **Definition.** Communication equipment means a conference telephone or other ~~electronic device~~comparable audio equipment that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present. Communication equipment also means video conference or comparable audiovisual equipment.

(b)–(c) [NO CHANGE]

(d) **Testimony.**

(1) **Generally.** [NO CHANGE]

(2) **Procedure.** [NO CHANGE]

(3) **Oath.** Testimony may be taken through audio communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided via video conference or comparable audiovisual equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who administers the oath consistent with the laws of that jurisdiction.

(4) **Confrontation Rights.** [NO CHANGE]

(5) **Video Testimony.** If the testimony to be presented utilizes video conferencing or comparable ~~two-way~~audiovisual capabilities, the court in its discretion may modify the procedures set forth in this rule to accommodate the technology utilized.

(e)–(f) [NO CHANGE]

RULE 3.116. TAKING TESTIMONY

(a) Testimony at Hearing or Trial. Upon stipulation of the parties, or upon motion of a party for good cause shown, the court may permit a witness to testify at criminal proceedings by contemporaneous audio-video communication technology that makes the witness visible to all parties, the judge, and any jury during the testimony.

(b) Communication Testimony. Any technology used must allow for the taking of contemporaneous video and there must be appropriate safeguards for the court to maintain sufficient control over the technology and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice.

(c) Oath. If testimony is taken through audio-video communication technology, there must be a notary public or other person authorized to administer an oath that subjects the witness to prosecution for perjury upon making a knowingly false statement. The notary or other authorized person must be in the same location as the witness appearing remotely.

(d) Burden of Expense. The cost for the use of audio-video communication testimony is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court.

RULE 7.140. TRIAL

- (a) **Time.** The trial date shall be set by the court at the pretrial conference.
- (b) **Determination.** Issues shall be settled and motions determined summarily.
- (c) **Pretrial.** The pretrial conference should narrow contested factual issues. The case may proceed to trial with the consent of both parties.
- (d) **Settlement.** At any time before judgment, the judge shall make an effort to assist the parties in settling the controversy by conciliation or compromise.
- (e) **Unrepresented Any Parties Not Represented by an Attorney.** In an effort to further the proceedings and in the interest of securing substantial justice, the court shall assist any party not represented by an attorney on:
- (1) courtroom decorum;
 - (2) order of presentation of material evidence; and
 - (3) handling private information.

The court may not instruct any party not represented by an attorney on accepted rules of law. The court shall not act as an advocate for a party.

(f) **How Conducted.** The trial may be conducted informally but with decorum befitting a court of justice. The rules of evidence applicable to trial of civil actions apply but are to be liberally construed. At the discretion of the court, testimony of any party or witness may be presented ~~over the telephone~~ by audio or video communication equipment technology as set forth in subdivision (g). Additionally, at the discretion of the court, an attorney may represent a party or witness ~~over the telephone~~ through the use of audio or video communication equipment technology as described in subdivision (g) without being physically present before the court. Any witness utilizing the privilege of testimony ~~by telephone~~ through the use of audio or video communication equipment technology as permitted in this rule shall be treated for all purposes as a live witness, ~~and shall not receive any relaxation of evidentiary rules or other special allowance whose testimony shall conform to the rules of evidence applicable to trial of civil action.~~ A witness may not testify ~~over the telephone in order~~ through the use of audio or

video communication technology as provided in this rule to avoid either the application of Florida's perjury laws or the rules of evidence.

(g) Audio or Video Communication Equipment Technology. Audio communication equipment technology as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video communication equipment technology must make the witness visible to all participants during the testimony. For testimony by any of the foregoing means, there must be appropriate safeguards to allow the court to maintain sufficient control over the equipment technology and the transmission of the testimony to stop the communication to accommodate objection or prevent prejudice.

Committee Notes

1984 Amendment. (a) Changed to conform this rule with the requirement for pretrials.

(c) Allows the cases to proceed to trial with consent of the parties.

(f) This is similar to the proposed amendment to the Florida Rules of Civil Procedure to allow depositions by telephone. Since the court has discretion to allow this testimony, all procedural safeguards could be maintained by the court. Since the court is also the trier of fact, the testimony could be rejected if unreliable.

1988 Amendment. Extends the taking of testimony over the telephone to include parties, deletes the agreement of the parties provision, and adds authorization for an attorney to represent a party or witness over the telephone without being physically present before the court.

1996 Amendment. The revised version of subdivision (e) addresses the need to expressly provide that the judge, while able to assist an unrepresented party, should not act as an advocate for that party.

2011 Amendment. Subdivision (e)(3) was added so that a judge can assist an unrepresented party in the handling of private information that might otherwise inadvertently become public by placement in the court file.

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

- (a) **Presence of the Child.** [NO CHANGE]
- (b) **Use of Restraints on the Child.** [NO CHANGE]
- (c) **Absence of the Child.** [NO CHANGE]
- (d) **Invoking the Rule.** [NO CHANGE]
- (e) **Taking Testimony.**

(1) Testimony at a Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless provided by law or these rules.

(2) Remote Testimony. Upon stipulation of the parties, or upon motion of a party for good cause shown, the court may permit a witness to testify at delinquency proceedings by contemporaneous video communication technology that makes the witness visible during the testimony to all parties, the judge, and any other necessary persons.

(3) Communication Technology. Any technology used must allow for the taking of contemporaneous video and there must be appropriate safeguards for the court to maintain sufficient control over the technology and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice.

(4) Oath. If testimony is taken through video communication technology, there must be a notary public or other person authorized to administer an oath that subjects the witness to prosecution for perjury upon making a knowingly false statement. The notary or other authorized person must be in the same location as the witness appearing remotely.

(5) Burden of Expense. The cost for the use of video communication technology is the responsibility of the requesting party.

- (f) **Continuances.** [NO CHANGE]
- (fg) **Record of Testimony.** [NO CHANGE]

(gh) Notice. [NO CHANGE]

Committee Note

20 Amendment. This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by contemporaneous video communications technology. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. Determination of good cause is governed by the confrontation clause principles as established in *Harrell v. State*, 709 So. 2d 1364 (Fla. 1998), and its progeny.

RULE 8.255. GENERAL PROVISIONS FOR HEARINGS

- (a) **Presence of Counsel.** [NO CHANGE]
- (b) **Presence of Child.** [NO CHANGE]
- (c) **Separate Examinations.** [NO CHANGE]
- (d) **Examination of Child; Special Protections.**
 - (1) **Testimony by Child.** [NO CHANGE]
 - (2) **In-Camera Examination.** [NO CHANGE]
- (e) **Taking Testimony.**

(1) Testimony at Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or these rules. This rule shall not apply to statutory requirements for parents to personally appear at arraignment hearings, advisory hearings, and adjudicatory hearings.

(2) Communication Technology. The court may permit a witness to testify at a hearing or trial by contemporaneous audio, or by video conference or comparable audio-video communication technology:

(A) by agreement of the parties; or

(B) for good cause shown upon written or ore tenus request of a party upon reasonable oral, written, or actual notice to all other parties. The request and notice must contain an estimate of the length of the proposed testimony. In considering sufficient good cause, the court must weigh and address in its order or its ruling on the record the reasons stated for testimony by communication technology against the potential for prejudice to the objecting party.

(3) Required Technology. Communication technology as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present.

Contemporaneous video conference or comparable audio-video communication technology must make the witness both audible and visible to all parties and participants present. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the technology and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice. A parent who participates by contemporaneous audio or video technology must be given the opportunity to privately and confidentially communicate with counsel during the proceedings.

(4) **Oath.** Testimony may be taken through audio technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided at the hearing via video conference or comparable audio-video communication technology, the witness may also be sworn remotely using such video conference or comparable audio-video communication technology by a person who is qualified and administers the oath consistent with the laws of the witness's jurisdiction or Florida. The oath procedures of this subdivision are not required for hearings where, by law, the court may consider any evidence to the extent of its probative value even though not competent in an adjudicatory hearing and where the parties and the court agree to waive these oath procedures.

(5) **Burden of Expense.** The cost for the use of the communication technology is the responsibility of the requesting party unless otherwise ordered by the court.

(f) **Invoking the Rule.** [NO CHANGE]

(fg) **Continuances.** [NO CHANGE]

(gh) **Record.** [NO CHANGE]

(hi) **Notice.** [NO CHANGE]

(j) **Written Notice.** [NO CHANGE]

Committee Notes

1991 Amendment. (b) This change allows a child to be present instead of mandating the child's presence when the child's presence would not be in his or her best interest. The court is given the discretion to determine the need for the child to be present.

1992 Amendment. This change was made to reflect a moderated standard for in-camera examination of a child less rigid than the criminal law standard adopted by the committee in the 1991 rule revisions.

2005 Amendment. Subdivision (i) was deleted because provisions for general masters were transferred to rule 8.257.

20 Amendment. This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by contemporaneous video or audio technology. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. In determining whether good cause exists, the trial court may consider such factors as the type and stage of proceeding, the presence or absence of constitutionally protected rights, the general substance of the testimony, the importance of the testimony to the resolution of the case, the relative cost or inconvenience of requiring the presence of the witness in court, the ability of counsel to use necessary exhibits or demonstrative aids, the limitations (if any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness's demeanor, the potential for unfair surprise, the witness's affiliation with one or more parties, and any other factors the court reasonably deems material to weighing the justification the requesting party has offered in support of the request to allow a witness to testify by communications technology against the potential for prejudice to the objecting party. With the advance of technology, the cost and availability of contemporaneous video testimony may be considered by the court in determining whether good cause is established for audio testimony.

Florida law favors the timely resolution of dependency proceedings for the benefit of children and their families. It relaxes evidentiary standards at certain hearings to promote efficient resolution of issues and prevent lengthy litigation and delays from having to arrange for witnesses to appear and provide testimony to the court. Florida law allows the court at different types of dependency hearings, including shelter hearings, disposition hearings, and judicial review hearings, to consider any evidence to the extent of its probative value including unsworn statements, hearsay, and unauthenticated documents. See e.g., Rule 8.305(b)(5); Sections

39.0139(4)(b), 39.504(3), 39.521(2), and 39.701(2)(c), Florida Statutes (2018). The oath procedures, which may require the presence of a notary with a witness who was appearing remotely, would thus not be necessary prior to the court considering statements from the witness at these types of hearings. Further, since the parties may stipulate to any matter in the litigation, the rule creates an exception to the oath procedures if the court and parties stipulate to waive the procedures.

RULE 12.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) **When Depositions May Be Taken.** [NO CHANGE]

(b) **Notice; Method of Taking; Production at Deposition.**

(1)—(3) [NO CHANGE]

(4) Any deposition may be audiovisually recorded ~~by videotape~~ without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to ~~videotape~~ audiovisually record a deposition must state in the notice that the deposition is to be ~~videotaped~~ audiovisually recorded and must give the name and address of the operator. Any subpoena served on the person to be examined must state the method or methods for recording the testimony.

(B) ~~Court Reporter~~ Recording. ~~Videotaped~~ Audiovisual depositions must also be ~~stenographically recorded by a certified court reporter,~~ unless all parties agree otherwise in case transcription is necessary.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken must, on camera: _____

_____ (i) identify the style of the action,

_____ (ii) state the date, and

_____ (iii) swear in the witness.

(D) Custody of ~~Tape~~ Recordings and Copies. The attorney for the party requesting the ~~videotaping~~ audiovisual recording of the deposition must take custody of and be responsible for the safeguarding of the ~~videotape~~ audiovisual recording, must permit the viewing of it by the opposing party, and, if requested, must provide a copy of the ~~videotape~~ audiovisual recording at the expense of the party requesting the copy.

(E) Cost of ~~Videotaped~~ Audiovisually Recorded Depositions. The party requesting the ~~videotaping~~ audiovisual recording bears the initial cost of ~~videotaping~~ recording.

(5)—(6) [NO CHANGE]

(7) If not otherwise agreed by the parties, ~~On~~ motion the court may order that the testimony at a deposition be taken by telephone or comparable audio ~~equipment~~technology, or by video conference or comparable ~~audiovisual equipment~~audio-video communication technology. The order may prescribe the manner in which the deposition will be taken. The cost for the use of such communication ~~equipment~~technology is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court. A party may also arrange for a stenographic transcription at that party's own initial expense.

(8) [NO CHANGE]

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by telephone, the witness must be sworn by a person physically present with the witness who is qualified to administer an oath in that location. If deposition testimony is being taken via video conference or comparable ~~audiovisual equipment~~audio-video communication technology, ~~and the parties agree,~~ the witness may also be sworn remotely using such video conference or comparable ~~audiovisual communication equipment~~audio-video communication technology using such such video conference or comparable audio-video communication technology by an online notary as authorized in section 117, Florida Statutes. The testimony must be ~~taken stenographically or~~ recorded by any other means ordered in accordance with subdivision (b)(4). If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer during the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that

party must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

- (d) **Motion to Terminate or Limit Examination.** [NO CHANGE]
- (e) **Witness Review.** [NO CHANGE]
- (f) **Filing; Exhibits.** [NO CHANGE]
- (g) **Obtaining Copies.** [NO CHANGE]
- (h) **Failure to Attend or to Serve Subpoena; Expenses.** [NO CHANGE]

Committee Notes

2008 Amendment. The provisions of *Fla. R. Civ. P.* 1.310(b)(8) do not alter the requirements of Rule 12.407 that a court order must be obtained before deposing a minor child.

20 Amendment. When obtaining testimony by video conference or comparable ~~audiovisual equipment~~ audio-video communication technology, oaths must be administered in conformity with section 117.201, et seq., Florida Statutes.

RULE 12.451. TAKING TESTIMONY

(a) **Testimony at Hearing or Trial.** [NO CHANGE]

(b) **Communication ~~Equipment~~Technology.** The court may permit a witness to testify at a hearing or trial by contemporaneous audio or by video conference or comparable ~~audiovisual equipment~~audio-video communication technology:

_____ (1) by agreement of the parties or;

_____ (2) for good cause shown upon written request of a party upon reasonable notice to all other parties.

_____ The request and notice must contain the substance of the proposed testimony and an estimate of the length of the proposed testimony. In considering sufficient good cause, the court shall weigh and address in its order the reasons stated for testimony by communication ~~equipment~~technology against the potential for prejudice to the objecting party.

(c) **Required ~~Equipment~~Technology.** Communication ~~equipment~~technology as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video conference or comparable ~~audiovisual equipment~~audio-video communication technology must make the witness both audible and visible to all participants during the testimony. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the ~~equipment~~technology and the transmission of the testimony, so that the court may stop the communication to accommodate objection or prevent prejudice.

(d) **Oath.** Testimony may be taken through audio communication ~~equipment~~technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of that jurisdiction. If testimony is provided at the hearing via video conference or comparable ~~audiovisual equipment~~audio-video communication technology, and the parties agree, the witness may also be sworn remotely using such video conference or comparable ~~audiovisual equipment~~audio-video communication technology by an online notary as authorized in section 117, Florida Statutes.

(e) **Burden of Expense.** The cost for the use of the communication ~~equipment~~technology is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court.

Committee Note

20 Amendment. When obtaining testimony by video conference or comparable ~~audiovisual equipment~~audio-video communication technology, oaths must be administered in conformity with section 117.201, et seq., Florida Statutes.